

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-CV11829 GAO

ROBERT S. STEPHENS,)
Plaintiff)
)
V.)
)
ROBERT MULHERN, individually)
and as Police Chief of the Town of)
Groton,)
PETER S. CUNNINGHAM,)
individually and as a Selectman for)
the Town of Groton,)
THOMAS D. HARTNETT individually)
and as a Selectman of the Town of)
Groton,)
DANN CHAMBERLIN, individually)
and as a Selectman of the Town)
of Groton,)
"JOHN DOE" and)
THE TOWN OF GROTON,)
Defendants.)

DEFENDANTS' ANSWER TO COMPLAINT AND DEMAND FOR JURY TRIAL

FIRST AFFIRMATIVE DEFENSE

The Defendants hereby state that the Plaintiffs' Complaint fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Defendants hereby answer the Plaintiff's Complaint, paragraph by paragraph, as follows:

1. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond.
2. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond.
3. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond.
4. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond.

PARTIES

5. The Defendants admit the allegations contained in this paragraph.
6. The Defendants admit the allegations contained in this paragraph.
7. The Defendants admit the allegations contained in this paragraph.
8. The Defendants admit the first sentence in paragraph number eight but deny the remaining allegations contained therein.
9. The Defendants admit the allegations contained in this paragraph.
10. The Defendants admit that the Town of Groton is a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts but deny the remaining allegations in this paragraph.

STATEMENT OF FACTS

11. The Defendants are without sufficient knowledge or information to form a belief as to the allegations contained in this paragraph.
12. The Defendants admit that the Plaintiff's neighbors called Groton Police on May 2, 2001 but deny the remaining characterizations contained in this paragraph.
13. The Defendants admit that the Groton Police did respond but deny the remaining allegations contained in this paragraph.
14. The Defendants admit that the Plaintiff was charged with assault by means of a dangerous weapon, disorderly conduct, and threatening to commit a crime. The Defendants deny the remaining allegations contained in this paragraph.
15. The Defendants admit that the Plaintiff was arrested and placed in handcuffs. The Defendants deny the remaining allegations contained in this paragraph.
16. The Defendants admit that the Groton Police, with the Plaintiff's permission, retrieved his FID card but deny the remaining allegations contained in this paragraph.
17. The Defendants deny the allegations contained in this paragraph.
17. (Sic - Second Numbered Paragraph 17). The Defendants are without sufficient knowledge or information to form a belief as to the allegations contained in this paragraph.
18. The Defendants deny the allegations contained in this paragraph.
19. The Defendants admit the allegations contained in this paragraph.

20. The Defendants are without sufficient knowledge or information to form a belief as to the allegations contained in this paragraph and to the extent required deny the allegations contained therein.
21. The Defendants deny the allegations contained in this paragraph.
22. The Defendants admit that additional charges were filed against the Plaintiff but deny the remaining allegations contained in this paragraph.
23. The Defendants deny the allegations contained in this paragraph.
24. The Defendants deny the allegations contained in this paragraph.
25. The Defendants deny the allegations contained in this paragraph.
26. The Defendants admit the allegations contained in this paragraph.
27. The Defendants admit the allegations contained in this paragraph.
28. The Defendants admit that the Plaintiff was found guilty of discharge of a firearm within 500 feet of a building.
29. The Defendants admit that the Groton Police Department patrols the streets of Groton, but deny the remaining allegations contained in this paragraph.
30. The Defendants deny the allegations contained in this paragraph.
31. The Defendants hereby repeat their responses to the proceeding paragraphs of the Plaintiff's complaint.
32. The Defendants deny the allegations contained in this paragraph.
33. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.
34. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.
35. The Defendants hereby repeat their responses to the proceeding paragraphs of the Plaintiff's Complaint.
36. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.
37. The Defendants deny the allegations contained in this paragraph.

38. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.

39. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.

40. The Defendants hereby repeat their responses to the proceeding paragraphs of the Plaintiff's Complaint.

41. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.

42. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.

43. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.

44. The Defendants hereby repeat their responses of the proceeding paragraphs of the Plaintiff's Complaint.

45. The Defendants deny the allegations contained in this paragraph.

46. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.

47. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.

48. The Defendants hereby repeat their responses to the proceeding paragraphs of the Plaintiff's complaint.

49. The Defendants admit the allegations contained in this paragraph.

50. The defendants are without sufficient knowledge or information to form a belief as to the allegations contained in this paragraph.

51. The defendants are without sufficient knowledge or information to form a belief as to the allegations contained in this paragraph.

52. The defendants are without sufficient knowledge or information to form a belief as to the allegations contained in this paragraph.

53. The defendants are without sufficient knowledge or information to form a belief as to the allegations contained in this paragraph.

54. The Defendants hereby repeat their responses to the proceeding paragraphs of the Plaintiff's Complaint.

55. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.

56. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.

57. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.

58. The Defendants hereby repeat their responses to the proceeding paragraphs of the Plaintiff's Complaint.

59. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.

60. The Defendants hereby repeat their responses to the proceeding paragraphs of the Plaintiff's Complaint.

61. The Defendants deny the allegations contained in this paragraph.

62. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.

63. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.

64. The Defendants hereby repeat their responses to the proceeding paragraph of the Plaintiff's Complaint.

65. The Defendants deny the allegations contained in this paragraph.

66. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.

67. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.

68. The Defendants hereby repeat their responses to the proceeding paragraph of the Plaintiff's Complaint.

69. The Defendants deny the allegations contained in this paragraph.

70. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.

71. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.

72. The allegations contained in this paragraph state a conclusion of law to which the Defendants need not respond. To the extent that a response is required, the Defendants deny same.

DEMAND FOR JUDGMENT

WHEREFORE, the Defendants deny that the Plaintiff is entitled to Judgment in any amount against the Defendants and, furthermore, the Defendants asks this Honorable Court to enter Judgment for the Defendants and against the Plaintiff along with interest, costs, and attorney's fees.

AFFIRMATIVE DEFENSES

THIRD AFFIRMATIVE DEFENSE

The individual Defendants are entitled to qualified immunity.

FOURTH AFFIRMATIVE DEFENSE

The Defendants state that they were justified in their acts or conduct and, therefore, the Plaintiff cannot recover.

FIFTH AFFIRMATIVE DEFENSE

The Defendants state that their actions and conduct were formed according to and protected by law and/or legal process and that therefore the Plaintiff cannot recover.

SIXTH AFFIRMATIVE DEFENSE

The Defendants state that their actions are immune from suit as they were engaging in discretionary functions.

SEVENTH AFFIRMATIVE DEFENSE

The Defendants state that they were privileged in their conduct and acts and that, therefore, the Plaintiff cannot recover.

EIGHTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the Defendants state that the action is barred by the applicable Statute of Limitations.

JURY CLAIM

The Defendants claim a trial by jury as to all issues properly triable to a jury.

Respectfully submitted,
THE DEFENDANTS,
Robert Mulhern,
Peter S. Cunningham,
ThomasD. Hartnett,
Dann Chamberlin,
"John Doe" and
The Town of Groton,
By their attorneys,

/s/ Jeremy I. Silverfine
Jeremy Silverfine, BBO No. 542779
Leonard H. Kesten, BBO No. 542042
BRODY, HARDOON, PERKINS & KESTEN
One Exeter Plaza
Boston, MA 02116
(617) 880-7100

Dated: 10/8/04